

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DARREN SHANKS,) Case No.: 1:20-cv-01083-SAB (PC)
Plaintiff,)
v.) ORDER DENYING PLAINTIFF'S SECOND
E. MENDEZ, et al.,) MOTION FOR APPOINTMENT OF COUNSEL,
Defendants.) WITHOUT PREJUDICE
) (ECF No. 31)
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Plaintiff Darren Shanks is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's second motion for appointment of counsel, filed February 17, 2021.

Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

1 Without a reasonable method of securing and compensating counsel, the court will seek
2 volunteer counsel only in the most serious and exceptional cases. In determining whether
3 "exceptional circumstances exist, the district court must evaluate both the likelihood of success on the
4 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
5 legal issues involved." Id. (internal quotation marks and citations omitted).

6 The test for exceptional circumstances requires the Court to evaluate the Plaintiff's likelihood
7 of success on the merits and the ability of the Plaintiff to articulate his claims pro se in light of the
8 complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir.
9 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most
10 prisoners, such as lack of legal education and limited law library access, do not establish exceptional
11 circumstances that would warrant a request for voluntary assistance of counsel. In the present case, on
12 September 9, 2020, the Court screened Plaintiff's complaint, found he stated a cognizable retaliation
13 claim, and Defendants have filed an answer to the complaint. Thus, the Court finds that Plaintiff is
14 capable of litigating this action even if it is with the assistance of another inmate. While the Court
15 recognizes that Plaintiff is at a disadvantage due to his pro se status and his incarceration, the test is
16 not whether Plaintiff would benefit from the appointment of counsel. See Wilborn v. Escalderon, 789
17 F.2d at 1331 ("Most actions require development of further facts during litigation and a pro se litigant
18 will seldom be in a position to investigate easily the facts necessary to support the case.") The test is
19 whether exception circumstances exist and here, they do not. Accordingly, Plaintiff's second motion
20 for appointment of counsel is be DENIED, without prejudice.

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22 IT IS SO ORDERED.

23 Dated: February 18, 2021



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UNITED STATES MAGISTRATE JUDGE